



## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 27**

#### **Civil Penalty Assessment for Misuse of Department of the Treasury Names, Symbols, Etc.**

**AGENCY:** Department of the Treasury.

**ACTION:** Direct final rule.

**SUMMARY:** This rule amends regulations that provide civil penalties for misuse of Department of the Treasury names, symbols, etc. to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. In particular, this rule adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under its regulations, and updates the inflation adjustments through 2018 in accordance with instructions from the Office of Management and Budget. In addition, the regulation is amended to reflect changes in Treasury organizational structure.

**DATES:** This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the Department receives significant adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal eRulemaking Portal:

<http://www.regulations.gov>

- Mail: Richard Dodson, Attorney-Advisor, General Law, Ethics, and Regulation, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220

Comments received by mail will be considered timely if they are postmarked on or before the comment date. The [www.regulations.gov](http://www.regulations.gov) site will accept comments until 11:59 p.m. eastern time on the comment due date. Received comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>. The Department will consolidate all received comments and make them available without change.

**FOR FURTHER INFORMATION CONTACT:** Richard Dodson, Attorney-Advisor, General Law, Ethics, and Regulation, 202-622-9949 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Discussion

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (collectively, the FCPIA Act), requires each

federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

The FCPIA Act directs agencies to adjust the level of CMPs for inflation annually, with an initial “catch up” adjustment effective no later than August 1, 2016. Catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the last non-FCPIA-Act-based adjustment and the October 2015 CPI–U. In accordance with the FCPIA Act, however, the amount of the CMP catch-up adjustment shall not exceed 150 percent of the level in effect on November 2, 2015 (the “maximum adjustment”). Annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of the adjustment and the prior year’s October CPI–U. The FCPIA Act requires agencies to round all CMP levels to the nearest dollar after applying the multiplier.

On February 24, 2016, the Office of Management and Budget (“OMB”) issued written guidance providing agencies with CPI– U related multipliers to use when adjusting the CMP level or range of CMP levels based on the year the CMP was established or last adjusted by statute or regulation. (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Guidance)).

The adjusted civil penalty amounts described in this rule are applicable only to civil penalties assessed after the effective date of this regulation.

Treasury is currently authorized to impose CMPs against persons who have misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the Department, pursuant to 31 U.S.C. 333. The maximum CMPs under this statute were established on August 15, 1994, and have not been adjusted. The maximum CMPs established were \$5,000 for each use of any material in violation of 31 U.S.C. 333(a), and \$25,000 if such use is in a broadcast or telecast.

#### Adjustment

Pursuant to the OMB Guidance, the relevant inflation factor is 1.67728 for the initial catch-up adjustment. Because application of the factor would result in an adjustment of greater than 150% for both 31 U.S.C. 333 CMPs, the initial adjustment of these penalties is limited to 150%. The relevant inflation factors for 2017 and 2018 are 1.01636 and 1.02041, respectively. OMB Memoranda M-17-11 and M-18-03.

With respect to the \$5,000 CMP, applying the initial 150% adjustment would result in a maximum penalty amount of \$7,500. Multiplying that amount by the 2017 factor of 1.0136 and rounding to the nearest dollar would yield a maximum penalty amount of \$7,623. Finally, applying the 2018 factor of 1.02041 to that amount results in an adjusted maximum penalty amount of \$7,779.

With respect to the \$25,000 CMP, applying the initial 150% adjustment would result in a maximum penalty amount of \$37,500. Multiplying that amount by the 2017 factor of 1.0136 and rounding to the nearest dollar would yields maximum penalty

amount of \$38,114. Finally, applying the 2018 factor of 1.02041 to that amount results in an adjusted maximum penalty amount of \$38,892.

#### Organizational Changes

Finally, the regulation is updated to reflect changes in organizational structure. References to the United States Customs Service, United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, Bureau of the Public Debt, and the Federal Law Enforcement Training Center have been deleted. The Bureau of the Fiscal Service and Commissioner of the Bureau of the Fiscal Service have been added. Because the existing regulation prohibits misuse of the titles of any Treasury organization or official, regardless of whether they are specifically listed, this update makes no substantive change in the coverage or application of the regulation.

#### Direct Final Procedures

Treasury is issuing this regulation as a direct final rule. The effective date of this rule is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless Treasury receives written adverse comments before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

If Treasury receives timely written adverse comments on this regulation, Treasury will withdraw the regulation before its effective date.

#### **Procedural Requirements**

##### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply because adjustments under the FCPIA Act are exempt from the requirement to publish a notice of proposed rulemaking.

#### Regulatory Planning and Review

The rule is not a “significant regulatory action” as defined in Executive Order 12866.

#### **List of Subjects in 31 CFR Part 27**

Administrative practice and procedure, Penalties.

For the reasons set out in the preamble, title 31, subtitle A, part 27 of the Code of the Federal Regulations is amended to read as follows:

#### **PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.**

1. The authority citation for part 27 continues to read as follows:

**Authority:** 31 U.S.C. 321, 333.

2. Amend § 27.3 by revising paragraphs (a)(1)(i) through (iii) and (c) to read as follows:

#### **§ 27.3 Assessment of civil penalties.**

(a) \*\*\*

(1) \*\*\*

(i) The words “Department of the Treasury,” “Internal Revenue Service,” “Bureau of the Fiscal Service,” “Bureau of Engraving and Printing,” “Comptroller of the Currency,” “Financial Crimes Enforcement Network,” “United States Mint,” “Alcohol and Tobacco Tax and Trade Bureau,” or the name of any other service, bureau, office, or subdivision of the Department of the Treasury;

(ii) The titles “Secretary of the Treasury,” “Treasurer of the United States,” “Commissioner of Internal Revenue,” “Commissioner of the Bureau of the Fiscal Service,” “Director of the Bureau of Engraving and Printing,” “Comptroller of the Currency,” “Director of the Financial Crimes Enforcement Network,” “Director of the United States Mint,” “Administrator of the Alcohol and Tobacco Tax and Trade Bureau,” or the title of any other officer or employee of the Department of the Treasury or subdivision thereof;

(iii) The abbreviations or initials of any entity or title referred to in paragraph (a)(1)(i) or (ii) of this section, including but not limited to “IRS,” “BFS,” “TTB,” and “FINCEN” or “FinCEN”;

\* \* \* \* \*

(c) Civil penalty. An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed \$7,779 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed \$38,892 for each and every use if such use is in a broadcast or telecast.

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Ryan D. Brady,  
Executive Secretary.

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